

DELEGATION OF DUTIES TO INTERSTATE COMMERCE COMMISSION EMPLOYEES

JULY 16, 1965.—Ordered to be printed

Mr. LAUSCHE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1148]

The Committee on Commerce to which was referred the bill S. 1148, to amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency, having considered the same, reports favorably thereon with amendments, and recommends that the bill as amended do pass.

SUMMARY OF PROPOSED LEGISLATION

S. 1148 would permit the Commission to assign or refer to individual employees those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits. The employees eligible for such delegation would include directors, deputy directors, or assistant directors of offices and bureaus, examiners, chiefs and assistant chiefs of sections, chiefs and assistant chiefs of branches, attorneys, accountants, and transportation economists and specialists.

NEED FOR LEGISLATION

The proposed legislation would allow individual Commission employees to process administrative matters, that is, those which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits. Examples of the type of matter that would be referred to individual employees are: the extension of dates for the filing of pleadings, the postponement of dates, the approval of changes in the form of tariffs or annual reports, and the approval of special permission tariff applications.

The Interstate Commerce Commission has advised the committee that it does not intend to delegate to individual employees any matter which would require an employee to decide the merits of a formal proceeding or any part of such a proceeding. Furthermore, although the matters that would be delegated are relatively routine and generally noncontroversial, the committee has added an amendment to the bill specifically preserving the right of appeal from any employee action under this bill.

The Commission indicated that enactment of S. 1148 would improve its overall administrative efficiency by allowing as many as 22,000 matters of a routine or specialized nature to be handled each year by qualified Commission employees.

Public Law 87-247, approved September 14, 1961, which allowed the Commission to authorize the delegation of certain duties to employee boards, has been quite helpful to the Commission in coping with an increasing caseload. The proposed legislation would similarly be of assistance by relieving Commissioners of the necessity of handling numerous matters of a relatively routine and specialized nature.

Hearings on this measure were conducted by the Surface Transportation Subcommittee starting on May 10, 1965. The Interstate Commerce Commission and the Department of Commerce testified in favor of the measure. The measure was also supported by the U.S. Chamber of Commerce. As amended, and with the Commission's expression that it does not intend to delegate decisions as to the merits of proceedings, there appears to be no opposition to the measure.

AMENDMENTS

The witness for the Association of American Railroads pointed out at the hearings that the bill as introduced did not provide for an appeal from the order or requirement of an individual Commission employee. The Chairman of the Interstate Commerce Commission indicated in his testimony that it was the intent of the Commission that such appeals be allowed. The committee added the following language to the bill to make it absolutely clear that a party could appeal from any order or requirement of an individual Commission employee:

In cases where such matters are assigned to individual employees of the Commission, any order or requirement of such individual employee shall be subject to the same provisions with respect to reargument and reconsideration, with respect to reversal or modification, with respect to stay or postponement pending disposition of the matter by the Commission or appellate division, and with respect to suits to enforce, enjoin, suspend, or set aside such order or requirement in whole or in part, as are contained in paragraphs (6), (7), (8), and (9) of this section with respect to orders or requirements of a board.

In the statement submitted by the Railway Labor Executives' Association, it was pointed out that the bill could be read as granting authority to the Interstate Commerce Commission to delegate to individual employees power to decide the merits of proceedings. The Commission has advised the committee that it does not intend to

delegate to individual employees any matter which would require an employee to decide the merits of a formal proceeding or any part of such a proceeding. The Commission's letter is set forth in full under agency comments, for the information of the Senate.

Subsequent to the hearings, the Commission reorganized its headquarters bureaus and offices. The committee amended the bill to add to the "eligible" employees the new positions established under the reorganization.

COST

The enactment of this bill will result in no increased Federal expenditures.

AGENCY COMMENTS

This bill was recommended by the Interstate Commerce Commission in its last annual report to the Congress. The Commission's letter of June 28, 1965, and attached revised justification for this measure is included in the report. The Comptroller General advised that he had no objection to its favorable consideration. The Department of Justice and the U.S. Civil Service Commission indicated that they had no comments to offer concerning this measure. The text of these agency statements and comments follow:

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 28, 1965.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: Enclosed is a revised justification for our legislative recommendation No. 10 which is implemented by S. 1148. This revised justification cites examples of matters which would be delegated to individual employees under S. 1148.

Under the provisions of S. 1148 the Commission does not intend to delegate to individual employees any matter which would require an employee to decide the merits of a formal proceeding or any part of such a proceeding. Furthermore, although the matters that would be delegated are relatively routine and generally noncontroversial, the right of appeal would be specifically preserved under the provisions of the bill as amended by the Subcommittee on Surface Transportation.

Sincerely yours,

CHARLES A. WEBB, *Chairman.*

JUSTIFICATION

In addition to a voluminous number of formal cases, the Commission's responsibilities under the act extend to numerous matters of relatively routine and specialized nature. For example, matters relating to extensions of time for filing annual, periodical, or special reports; rejection of tariff publications for failure to give lawful notice or failure to comply with the Commission's regulations; and orders assigning cases for hearing, extending dates for the filing of pleadings and postponing compliance dates. Except with respect to assignments to a division or an individual Commissioner, under the present provisions of section 17(2), the Commission may delegate such functions only to three-man boards, and the only employees eligible to

serve on these boards are "examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys."

When applied to matters of the type described above, we believe that the mandatory requirements of section 17(2) are unnecessary and unduly limit our authority in what essentially is an administrative area.

The proposed bill has been narrowly drawn so as to affect only the processing of matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.¹ In this limited area the draft bill (1) would authorize the Commission to refer such matters to eligible individual employees, and (2) would expand the list of "eligible" employees to include assistant chiefs of sections, chiefs and assistant chiefs of branches, accountants, transportation economists and specialists, and other qualified persons designated by the Commission.

In our judgment, enactment of the proposed legislation would enable us to utilize key employees more effectively and would contribute significantly to improved overall administrative efficiency. In this respect, a preliminary estimate indicates that as many as 22,000 matters of a routine or specialized nature could be handled each year by qualified Commission employees.

APPENDIX

EXAMPLES OF COMMISSION WORK, BUSINESS AND FUNCTIONS WHICH COULD BE DELEGATED TO INDIVIDUAL EMPLOYEES

Office of proceedings

1. Areas where orders now are entered in the name of a single Commissioner or Division I, such as orders assigning cases for hearing, orders extending dates for the filing of pleadings, orders postponing compliance dates, effective dates, and orders authorizing the changing of name of a carrier, etc.

2. Noncontested motor, water and freight forwarder application cases of the type now handled by Operating Rights Board No. 1.

Item No. 1 would relieve Commissioners of the possibility of dealing personally with up to 10,000 items a year. Item No. 2 appears desirable since actions of Board No. 1, about 1,200 a year, are seldom questioned by the filing of petitions for reconsideration, and it is believed that the nature of the cases is such that delegations to an individual would be just as effective.

Bureau of accounts

1. Authority to permit the use of prescribed accounts which by provisions of their own texts require special authority.

2. Authority to permit departures from general rules prescribing uniform systems of accounts.

3. Authority to prescribe by order, rates of depreciation to be used by individual carriers by railroad, water, and pipeline.

4. Authority to issue special authorizations permitted by the prescribed regulations governing the destruction of records of carriers.

5. Annual valuation of pipelines.

6. Approval of protective service contracts.

¹ Matters of a type included in this category, together with brief comments pertaining thereto, are listed in an attached appendix.

It is apparent that matters arising under items 1 through 6 (about 125 a year) are of a highly technical nature and, in this circumstance, we believe that the professional judgment of the bureau director or qualified members of his staff could be relied upon for their disposition.

7. Matters relating to annual, periodical, or special reports of carriers, lessors, brokers, freight forwarders, and other persons under parts I, II, III, and IV, presently assigned to Division 2. For example, approval of changes in the reporting forms and other requirements which often are made to conform them to corresponding changes in the Commission's accounting rules governing the respective types of carriers.

8. Extensions of time for filing annual, periodical, or special reports; exemption of individual carriers and others from reporting requirements now assigned to the Vice Chairman. Items 7 and 8 are routine in nature. For example, the extension of filing dates is essentially an administrative matter. These delegations would relieve Division 2 of the necessity of passing upon some 25 report matters each year, and the Vice Chairman of acting on 200 applications per year in matters currently assigned to him.

Bureau of Economics

Matters of access to waybills or photostat copies thereof.

Bureau of Operations and Compliance

Authority for district supervisors to approve one-time shipment motor carrier temporary authorities, in bona fide emergencies, in the field.

In about 100 cases annually, authorization is given for one-time shipments in severe emergencies; e.g., replacement parts for a transformer which has interrupted electrical power in a community; a bridge span portion to repair a bridge closed to traffic until repaired.

Bureau of Traffic

Approval of special permission applications, now handled by the Special Permission Board, consisting of three members.

There are about 10,000 of these items coming before the Special Permission Board each year. If this work is delegated to individuals, it probably would be divided among as many as three persons because of the volume. However, rather than have two or three board members look at each request for special permission (e.g., each board member now reviews about 6,700 a year), each of three individual delegates would look at one-third of the total number or about 3,300.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 5, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 18, 1965, requesting our comments on S. 1148, which would amend section 17(2) of the Interstate Commerce Act to enable the Commission to utilize its employees more effectively and to improve administrative efficiency by permitting the Commission to assign or refer, with certain exceptions, any of its work, business or functions in

the matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits to an individual Commission employee of particular classes or such other qualified employees as it may designate. Such employees would also be eligible for assignment to boards through which the Commission performs certain of its work. This bill would implement legislative recommendation No. 10 shown on page 65 of the 78th Annual Report of the Interstate Commerce Commission submitted to the Congress on December 31, 1964.

The enactment of S. 1148 would not affect the functions and operations of our Office, nor would it adversely affect the interests of the United States as a user of transportation. It apparently would enable the Commission to utilize its qualified employees more effectively in the handling of routine or specialized matters with the purpose of contributing to improve overall administrative efficiency and, therefore, we have no objection to favorable consideration of S. 1148.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

MARCH 18, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1148, a bill to amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 18, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, New Senate Office
Building.

DEAR MR. CHAIRMAN: This is in further reply to your letter of February 18, 1965, requesting the Commission's views on S. 1148, a bill to amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency.

The Civil Service Commission has no comments to offer with respect to this bill as its subject is outside the scope of the Commission's jurisdiction.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

(2) The Commission may by order direct that any of its work, business, or functions under any provision of law (except matters required to be referred to joint boards by section 205, and except functions vested in the Commission under this section), or any matter which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a "board"), *and the Commission may also assign or refer those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits to eligible individual employees of the Commission, to be designated by such order for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference.* [The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys.] *In cases where such matters are assigned to individual employees of the Commission, any order or requirement of such individual employee shall be subject to the same provisions with respect to reargument and reconsideration, with respect to reversal or modification, with respect to stay or postponement pending disposition of the matter by the Commission or appellate division, and with respect to suits to enforce, enjoin, suspend, or set aside such order or requirement in whole or in part, as are contained in paragraphs (6), (7), (8), and (9) of this section with respect to orders or requirements of a board. The following classes of employees shall be eligible for designation by the Commission to serve on such boards, or to receive individual delegations: directors, deputy directors, or assistant directors of offices and bureaus, examiners, chiefs and assistant chiefs of sections, chiefs and assistant chiefs of branches, attorneys, accountants, transportation economists and specialists, and such other qualified persons as the Commission may designate.*

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